96-22

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

MICHAEL EUGENE ARMSTRONG
AND JERRY JAMGOTCHIAN,

Petitioners,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondents.

Petition For A Writ Of Certiorari To The Appellate Department Of The Superior Court, State Of California, County Of Los Angeles

PETITION FOR WRIT OF CERTIORARI

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45pp

QUESTIONS PRESENTED

1. Is the 1912 decision of this Court in *Murphy v. California*, (1912) 225 U.S. 623, still a constitutionally viable precedent precluding any lower courts from any critical analysis of the constitutional underpinnings of any proscriptive regulations of billiard centers notwithstanding modern societal developments since that decision?

2. In an Equal Protection context, does not the rational basis test require that the government justify dissimilar treatment of those similarly situated by at least a showing of a reasonable or sensible conclusion premised upon cognizable legislative experience?

LIST OF PARTIES

All parties to the proceeding in the Court whose judgment is sought to be reviewed are listed in the caption of this petition.

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Michael Eugene Armstrong and Jerry Jamgotchian respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Appellate Department of the Superior Court, State of California, County of Los Angeles, entered in the above-entitled proceeding on December 27, 1995.

OPINIONS BELOW

The opinion of the Appellate Department of the Superior Court, State of California, County of Los Angeles, is attached hereto as part of the appendix. Said decision has not been published in any case reports.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (a).

The Appellate Department of the Superior Court of the State of California, County of Los Angeles, is the highest State Court which addressed the merits of this matter and its decision was filed on December 27, 1995.

Petitioners thereafter sought discretionary review in the Court of Appeal of the State of California for the Second Appellate District which denied that discretionary review on January 23, 1996.

Petitioners thereafter sought discretionary review in the Supreme Court of the State of California which

denied said discretionary review on April 10, 1996. Said denial is attached hereto as part of the Appendix.

STATUTES INVOLVED

HAWTHORNE MUNICIPAL CODE Section 5.32.070. Hours of Business. No person engaging in the business of operating a billiard or poolroom shall allow the playing of billiards or pool in his place of business except between the hours of 7:00 AM and 2:00 AM of the following day.

HAWTHORNE MUNICIPAL CODE Section 5.32.100 - Bowling Alleys - No restriction of hours.

HAWTHORNE MUNICIPAL CODE Section 17.26.020 (30) - Theaters - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.64.010 - Indoor Restaurants - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.010 - Amusement Arcades - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.020 - Astrology - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.030 - Boxing and Wrestling - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.040 - Carnivals and Fairs - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.070 - Circus - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.080 - Amusement Devices - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.100 - Shooting Gallery - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.34.010 - Tent Show - No Restriction of Hours.

HAWTHORNE MUNICIPAL CODE Section 5.44 - Escort Bureaus - No Restriction of Hours.

All Codes are attached hereto as part of the Appendix.

Amendment XIV of the *United States Constitution* . . . No State shall . . . deny to any person within its jurisdiction Equal Protection of the laws.

STATEMENT OF THE CASE

On January 17, 1995, the People of the State of California filed a criminal complaint in the Los Angeles Municipal Court against Michael Eugene Armstrong and Jerry Jamgotchian alleging a violation of *Hawthorne Municipal Code* Section 5.32.070 by Armstrong and Jamgotchian being engaged in the business of operating a billiard room and allowing the playing of billiards between the hours of 2:00 AM and 7:00 AM, which that Code prohibited.

On February 10, 1995, Armstrong and Jamgotchian filed a demurrer to the complaint and motion to dismiss

claiming that Section 5.32.070 violated the Equal Protection clauses of the United States and California Constitutions. Armstrong and Jamgotchian claimed that said section was unconstitutional because, without a rational basis, it restricted the hours of operation of non-alcohol dispensing billiard halls without so limiting the hours of operation of similarly situated amusement businesses (i.e., bowling alleys, arcades, boxing matches, shooting galleries and escort bureaus). The People of the State of California opposed the demurrer and motion to dismiss, but on March 29, 1995, the Los Angeles Municipal Court sustained the demurrer and granted the motion to dismiss.

On April 14, 1995, the People of the State of California filed a Notice of Appeal from those Municipal Court orders and brought the matter before the Appellate Department of the Superior Court of the State of California, County of Los Angeles. That Court reversed the Municipal Court orders by way of Memorandum Judgment on the Merits filed on December 27, 1995. Specifically believing itself bound by the decision of this Court in *Murphy v. California*, 225 U.S. 623 (1912) and specifically relying thereon, the Court below concluded that there was a reasonably conceivable state of facts thus providing a rational basis for the differential treatment of billiard halls and other similarly situated entertainment business. Thereafter, petitioners sought discretionary review of that decision in the Court of Appeal of the State of California, Second Appellate District, but that Court denied said discretionary review on January 23, 1996. Thereafter, petitioners sought discretionary review in the Supreme Court of the State of California, but that Court denied discretionary review on April 10, 1996.

Petitioners have at all times maintained that there is no rational basis for the differential treatment mandated by the *Hawthorne Municipal Code* restricting the hours of billiards, while leaving such other potentially more socially adverse businesses free from such restrictions and have also consistently maintained that the decision of this honorable Court in *Murphy v. California*, 225 U.S. 623 (1912) should not be afforded continuing constitutional viability in that it is premised upon an archaic, moralistic viewpoint no longer consistent with prevailing social values or the realities of non-alcohol dispensing, upscale, billiard establishments.

REASONS FOR GRANTING THE WRIT

1. *Murphy v. California*, (1912) 225 U.S. 623 should be overruled by the Court as no longer constitutionally viable.

Finding itself perhaps reluctantly bound by the 1912 decision of this Court in *Murphy v. California*, 225 U.S. 623 (1912), the Court below was compelled to necessarily adopt the now anachronistic *Murphy* proposition that since the mere "keeping of a billiard hall has a harmful tendency," municipal authorities may take "legislative notice of the idleness and other evils which result from the maintenance of a billiard hall" and thus are constitutionally permitted to proscribe such businesses. Once the municipality has so acted, the *Murphy* decision instructs that courts may not critically analyze the basis for that proscription to test its rationale. *Murphy, supra*, at 629.

Petitioners submit that the conclusionary factual foundation for the *Murphy* decision has been rejected by

this Court in subsequent decisions and that it has been imploded by emerging social conditions and modern mores. Therefore, *Murphy* simply cannot continue to be constitutionally viable.

For as the Court recognized in *Aladdin's Castle, Inc. v. City of Mesquite*, 630 F.2d 1029, 1049, 1041, fn.16 (5th Cir. 1980):

> "*Murphy* rested its distinction on the theory that 'the law does not prevent the municipal authorities from taking legislative notice of the idleness and other evils which result from the maintenance of a resort . . . ' This view of idleness has been rejected by the Supreme Court:
>
> > 'All loitering . . . or idling . . . is not necessarily detrimental to the public welfare . . . it may often be entirely innocuous.'
>
> *Papachristou v. City of Jacksonville*, 405 U.S. 156, 157 n2 (1972). Today *Murphy* stands only for the proposition that the States have the power to make a morally neutral judgment that [some activity] has a tendency to injure a community as a whole . . .

Jacobellis v. Ohio, 378 U.S. 184 (1964)."

Petitioners respectfully submit that *Murphy, supra,* is thus premised upon a prejudicially archaic mischaracterization of the modern nature of a family oriented sport. For the dingy "poolhall" populated at the turn of the last century with unsavory characters has given way toward the turn of a new century to the upscale, multi-million dollar, well-lit, clean, neighborhood and family oriented billiard palace maintained and operated so as to welcome

upstanding members of the community in an atmosphere which is conducive to a family sport without the presence of alcohol. Thus, the ancient decision in *Murphy, supra,* can be no more viable from a modern constitutional standpoint than such equally ancient and discredited Equal Protection decisions as authorized segregation based on race. (*Plessy v. Ferguson,* 163 U.S. 537 (1896).)

"The law must be stable, but it must not stand still." *Introduction to the Philosophy of Law,* Rosco E. Pound (1922).

Additionally, however, the *Murphy, supra,* decision enunciates a now completely discredited constitutional prohibition of judicial analysis as to whether the municipality has indeed posited a rational basis for differential treatment of those similarly situated. *Murphy, supra,* at 629. For even the 1993 decision of this Court in *Federal Communications Commission v. Beach Communications,* 508 U.S.___, 113 S. Ct. 2096 (1993) recognizes that in an Equal Protection challenge, the Court must at least analyze whether there is any "reasonably conceivable state of facts that could provide a rational basis for the classification." *Murphy* is thus no longer viable.

2. *Hawthorne Municipal Code* Section 5.32.070 is unconstitutional in violation of the Equal Protection provision of the United States Constitution.

Petitioners respectfully submit that in an Equal Protection contextual analysis, the "rational basis test" has not been perverted to the "any basis at all test." Simply put, legislatively imposed distinctions between those similarly situated must still be "rational" or based upon

"reasonable" or "sensible" conclusions premised upon some "legislative experience." Differential treatment based merely upon speculative emotionalism is by its inherent nature, not "rational."

Petitioners respectfully submit that there is no rational basis upon which the City of Hawthorne can arbitrarily and unreasonably create dissimilar classifications of entertainment businesses when those businesses are similarly situated. *Williams v. Field*, 416 F.2d 483, 486 (1969). For the Fourteenth Amendment does not allow local government to proscribe private business operations in a manner that exposes entrepreneurs to unreasonable discrimination by singling them out to bear a singular burden not so imposed on other businesses profoundly more likely to cause adverse impact. There is thus a point beyond which local government cannot proceed without violating the Equal Protection Clause and where it imposes classifications that are not reasonably related to the purpose of its laws, it proceeds arbitrarily and not rationally. *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522 (1959).

It is axiomatic that distinctions imposed by government upon businesses cannot be justified if the discrimination has no reasonable relation to the differences between businesses. See, e.g. *Ferguson v. Skrupa*, 372 U.S. 726 (1963).

What rational justification can there be for the City's arbitrary restriction of the hours of a non-alcohol dispensing, family billiard parlor and yet its leaving a bowling alley, an arcade, a shooting gallery and an escort bureau, not so regulated at all?

As this Court declared in *Reed v. Reed*, 401 U.S. 71, 75, 76 (1971):

> "The Equal Protection clause . . . denies to states the power to legislate that different treatment to persons placed by statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. The classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference, having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.' "

It is respectfully submitted that there is no rationality for the singular restrictions imposed upon petitioners by the *Hawthorne Municipal Code* at issue herein and that it is thus unconstitutional. Therefore, the Court below clearly erred and its decision must be reversed.

CONCLUSION

For the foregoing reasons, petitioners request that this petition for certiorari be granted.

Respectfully submitted,

Joshua Kaplan
Law Offices Of Joshua Kaplan
Attorney for Petitioners
Michael Eugene Armstrong and
Jerry Jamgotchian

APPENDIX A

APPELLATE DEPARTMENT OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Appellant, v. MICHAEL EUGENE ARMSTRONG, et al., Defendants and Respondents.	Superior Ct. No. BR 35347 Municipal Court of the Inglewood Judicial Dist. No. 95M00385 **MEMORANDUM JUDGMENT** (Filed Dec. 27, 1995)

This cause having been submitted for decision, and fully considered, judgment is ordered as follows:

The orders sustaining defendants' demurrer to the misdemeanor complaint and dismissing the charge are reversed.

Michael Armstrong and Jerry Jamgotchian (hereinafter "respondents") were charged by misdemeanor complaint with violating section 5.32.070 of the Hawthorne Municipal Code (hereinafter "the ordinance"), by operating a billiard or pool hall between the hours of 2 a.m. and 7 a.m. Prior to entering a plea in this case, respondents demurred to the criminal complaint on the ground the ordinance violated the Equal Protection Clause of the Constitution by unreasonably regulating the operating hours of pool halls while other "similarly situated" entertainment and amusement establishments had no restrictions on their hours of operation. The trial court

ultimately sustained the demurrer, and dismissed the charge. The People timely appealed the court's orders.

On appeal, the People contend the ordinance passes constitutional scrutiny, and therefore the trial court erred in sustaining the demurrer and dismissing the complaint on the ground the ordinance was unconstitutional. Based on the following analysis, we agree, and therefore reverse the lower court's orders.

In reviewing whether the ordinance is constitutional in this instance, the appropriate standard of review is the rational basis test, for the ordinance does not impinge on a fundamental right, nor does it affect a suspect classification.[1] This test requires that legislative action be rationally related to the accomplishment of a legitimate state purpose. First, the challenged legislation must have a legitimate public purpose based on promotion of the public welfare, health or safety. (***Rinaldi v. Yeager*** (1966) 384 U.S. 305, 309-310.) Second, the action taken must bear a rational relation to the end it seeks to further. (***Griswold***

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[1] Respondents have not contended that the ordinance affects their right to freedom of association, and in any event, the activities engaged in at respondents' establishment "qualifies neither as a form of 'intimate association' nor as a form of 'expressive association,' as those terms were described in ***Roberts.***" (***City of Dallas v. Stanglin*** (1989) 490 U.S. 19, 25, citing ***Roberts v. United States Jaycees*** (1984) 468 U.S. 609, 617-618.) In ***Roberts***, the Supreme Court recognized constitutional associational interest in "choices to enter into and maintain certain intimate human relationships" and in associations engaged in "speech, assembly, petition for the redress of grievances, and the exercises of religion." (***Ibid.***) Respondent's business establishment does not implicate these forms of association.

v. Connecticut (1965) 381 U.S. 479, 505-507.) The test requires that the legislation constitute a means that is reasonable, not arbitrary, and rests "upon some ground of difference having a fair and substantial relation to the object of the legislation." (*Reed v. Reed* (1971) 404 U.S. 71, 76.) An Equal Protection challenge will fail "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification" (*FCC v. Beach Communications, Inc.* (1993) 508 U.S. ___, ___, 124 L.Ed.2d 211) and the legislature is not required to articulate the purpose or rationale supporting its classification. (*Ibid.*) A statute held up to rational basis scrutiny has a strong presumption of validity, and such statutes "must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears." (*Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 815.)

Respondents contend the ordinance is unconstitutional because it separates pool halls from other amusement centers and subjects them to restrictions on their operating hours, a restriction to which other establishments are not subjected. Respondents acknowledge that in other cases a municipality has been allowed "to reasonably restrict the hours of operation of an economic enterprise." (*People v. Glaze* (1980) 27 Cal.3d 841, 845; see also *Brix v. City of San Raphael* (1979) 92 Cal.App.3d 47, and *7978 Corp v. Pitchess* (1974) 41 Cal.App.3d 42.) Respondents contend, however, that those cases involved businesses of less than wholesome character (a massage parlor and a dance hall).[2]

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[2] Respondents continually refer to their establishment as a "family-oriented, alcohol free" business. Appellant has cited

Respondents also acknowledge the existence of ***Murphy v. California*** (1912) 225 U.S. 623, in which case the United States Supreme Court specifically held that a municipality may enact legislation regulating or even prohibiting pool halls without violating the Equal Protection Clause. Respondents challenge the continuing legitimacy of this case, contending its reasoning is based on anachronistic views of both society and pool halls. While this may be accurate (at least one federal court has suggested that its moralistic viewpoints have been rejected; see ***Aladdin's Castle, Inc. v. City of Mesquite*** (5th Cir. 1980) 630 F.2d 1029, 1040-1041, fn. 16), the fundamental reasoning of the court, and the case itself, has never been reversed or modified, and is still viable and good law. In such a case, this court is bound to follow the precedent established in this earlier case. (See, ***Auto Equity Sales Inc. v. Superior Court*** (1962) 57 Cal.2d 450, 455.)

In ***Murphy, supra*** the United States Supreme Court held that a municipality may regulate the operation of billiard or pool halls even if other entertainment establishments are not so regulated, on the general theory that the municipality has the power to control activities that endanger or jeopardize the public safety, and to maintain

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evidence to the contrary in its reply brief, and requested we take judicial notice of criminal cases filed as a result of alleged criminal activity taking place at the business in question. We need not make, and we do not make, any conclusions as to the reputation of respondents' business; the only fact which must be established is that respondents' business operates as a pool or billiard hall. This fact is not in dispute. Appellant's request that we take judicial notice of other case files unrelated to this action is, therefore, denied.

a decent society. (See also ***Paris Adult Theatre I v. Slaton*** (1973) 413 U.S. 49, 69.) In the present case, Hawthorne could have determined that having pool halls open during the very early morning hours jeopardized the public safety by creating an area likely to attract large numbers of people who have a greater tendency to breach the public peace, while at the same time determining other entertainment establishments did not create such a situation.

We note that under ***Murphy*** Hawthorne could perhaps have taken a more drastic course of action and completely prohibited pool halls within its city limits; however, the municipality chose a less restrictive means and chose only to require pool halls to close for five hours during the early morning. Such a restriction is not without reason, and as such is a reasonable exercise of the municipality's police powers. The ordinance is therefore constitutional under the rational basis test. The trial court's determination to the contrary was incorrect, and its orders sustaining the demurrer and dismissing the complaint must therefore be reversed. The matter is remanded to the municipal court with orders to reinstate the complaint and proceed accordingly.

/s/ Roberson
Roberson, P.J.

We concur.

/s/ Johnson
Johnson, J.

/s/ Mallano
Mallano, J.

APPENDIX B

Second Appellate District, Division Three,
No. B098826, S051516

IN THE SUPREME COURT OF CALIFORNIA

MICHAEL EUGENE ARMSTRONG Et Al., Petitioners

v.

MUNICIPAL COURT L.A. Et Al., Respondents
THE PEOPLE, Real Party In Interest

(Filed April 10, 1996)

Application for stay and petition for review DENIED.

LUCAS
Chief Justice

APPENDIX C

Chapter 5.32

BOWLING, BILLIARDS AND POOL HALLS

Sections:

5.32.010 License fee.
5.32.020 Permit required.
5.32.030 Application for permit.
5.32.040 Granting or refusal of permit.
5.32.050 Contents of permit.
5.32.060 Screening of table prohibited.
5.32.070 Hours of business.
5.32.080 Entertainment prohibited.
5.32.090 Minors prohibited – Exceptions.
5.32.100 Bowling.

5.32.010 License fee.

Every person engaging in the business of operating a billiard or pool room shall pay a license fee of twenty-four dollars per year. (Prior code § 7-400.)

5.32.020 Permit required.

No person shall establish or operate any billiard room, pool room or other place in the city where any billiard table or pool table is kept for hire, for public use or the use of any member of any club or association, without first having obtained a permit to do so from the council: provided, however, that any person may own, operate or keep for hire not more than two coin-operated billiard tables or pool tables for public use or for the use of any member of any club or association without first having obtained a permit to do so from the city council:

and provided further, that nothing herein contained is to exempt the maintenance, operation or keeping for hire of any such coin-operated billiard table or pool table from the license provisions of Section 5.34.080A of this code. (Prior code § 7-401.)

5.32.030 Application for permit.

Applications for such permit shall be filed with the business license supervisor at least ten days before such permit is granted. The business license supervisor shall refer all such applications to the council. Applications shall state, in addition to the information required by Section 5.06.020 of this code, the location of the proposed pool or billiard room, the number and kind of tables proposed to be used and kept, and what, if any, other business is to be conducted in conjunction therewith or under the same management. (Ord. 1284 § 1 (part), 1983 prior code § 7-402.)

5.32.040 Granting or refusal of permit.

No permit hereunder shall be granted to any person who has had any such permit previously revoked. (Prior code § 7-403.)

5.32.050 Contents of permit.

The permit shall state the time for which it is to run and the place where the business is to be carried on. (Prior code § 7-404.)

5.32.060 Screening of table prohibited.

No person engaging in operating a billiard or pool room shall keep any billiard or pool table therein hidden from public view. (Prior code § 7-405.)

5.32.070 Hours of business.

No person engaging in the business of operating a billiard or pool room shall allow the playing of billiards or pool in his place of business except between the hours of seven a.m. and two a.m. of the following day. (Prior code § 7-406.)

5.32.080 Entertainment prohibited.

It is unlawful for any person to engage in suffer [sic] or allow any entertainment or attraction other than billiards or pool in a place of business required to be licensed under this chapter. (Prior code § 7-407.)

5.32.090 Minors prohibited – Exceptions.

A. No person under the age of eighteen years shall be in, remain in, enter or visit any billiard or pool room licensed under this chapter, and no person having charge or control of any billiard or pool room licensed under this chapter shall permit or suffer any person under the age of eighteen years to be in, remain in, enter or visit any billiard or pool room licensed under this chapter.

B. Notwithstanding the provisions of subsection A of this section, a person under the age of eighteen years but over the age of thirteen years may be in, remain in, enter or visit any billiard or pool room licensed under this chapter which also holds a special permit in writing issued by the chief of police authorizing persons under the age of eighteen years to be in, remain in, enter or visit such billiard or pool room. The chief of police shall issue such permit upon written application only if all of the following conditions are met:

1. No alcoholic beverages are dispensed, sold, consumed or brought onto the premises on which said billiard or pool room is located;

2. Such billiard or pool room shall have posted at each entrance thereto and at not fewer than three additional places within said billiard or pool room, a sign in letters not less than one inch in height reading as follows: "Possession of Alcoholic Beverages is Not Permitted on These Premises. No Person Under 18 Years of Age is Permitted on These Premises Unless Accompanied by One Parent or Unless He or She is Over the Age of 13 Years and Written Permission From His or Her Parent Has Been Personally Filed With The Management":

3. No person under the age of eighteen years shall be permitted to be in, remain in; enter or visit any billiard or pool room licensed under this chapter before the hour of nine a.m. nor after the hour of ten p.m. on any day nor during the hours of any day when elementary or high school is in regular session;

4. No person under the age of eighteen years shall be permitted in any billiard or pool room licensed under this chapter except in one of the following cases:

   a. Such person is accompanied by one of his parents, or

   b. Such person is over the age of thirteen years and one of his parents has personally filed with the operator of such billiard or pool room the written consent of such parent to such person being in, remaining in, entering or visiting said billiard or pool room, setting forth the name of such person, the name,

address and telephone number of the parent signing said consent, which said written consent shall be maintained on the premises by the operator at all times and shall be made available for inspection by any duly authorized personnel of the police department at any time during regular business hours.

Any permit issued by the chief of police pursuant to the provisions of this subsection may be suspended or revoked by the chief of police in writing and such suspension and revocation shall be effective for all purposes upon the issuance thereof; provided, however, that any person dissatisfied with the action of the chief of police in suspending or revoking any such permit may appeal such suspension or revocation of such permit to the city council by filing a written notice of appeal with the business license supervisor within ten days following the effective day of any such suspension or revocation. Upon receipt of notice of appeal of any such suspension or revocation, the business license supervisor shall place the appeal on the agenda of the next regular city council meeting following receipt thereof.

(Ord. 1284 § 1 (part), 1983; prior code § 7-408.)

5.32.100 Bowling.

Every person engaging in the business of operating a bowling alley shall pay a license fee of fifty dollars per year or gross receipts basis, whichever is greater. (Prior code § 7-300.)

APPENDIX D

17.26.020 Permitted uses.

In a C-2 zone that following uses only are permitted and as specifically provided and allowed by this chapter:

1. Churches; subject to the conditions set forth in Chapters 17.14 and 17.58;

2. Ambulance service;

2.5 Amusement arcades, subject to the issuance of a conditional use permit;

3. Automobile and truck sales and service, new and or used, when operated in conjunction, but not used alone, and not including automobile service stations; and automobile and truck leasing where the leasing activity at the same site and location;

4. Bars and cocktail lounges;

5. Bicycle shops, but not including motorcycles or motorcycle repairs;

6. Billiard halls and pool halls;

7. Bowling alleys;

8. Business and professional offices;

9. Cleaning and pressing establishments using nonflammable and nonexplosive cleaning fluids and liquids with a flash point above 138.5 F. in a closed safety cleaning system;

10. Conservatories of music, dance, drama and instrument instruction;

11. Dance halls;

12. Decorator shops (interior);

13. Employment agencies;

14. Engineering consultant;

15. Gymnasiums, public commercial, or physical culture shops;

16. Hospitals, emergency only;

17. Hotels or motels, but not apartment hotels, subject to a conditional use permit. A market feasibility study prepared by a city approved consultant shall be submitted with a conditional use application;

18. Laboratories, x-ray;

19. Massage parlors and reducing salons;

20. Medical-dental buildings and clinics;

21. Mortuaries, subject to the issuance of a conditional use permit;

22. Parking lots, when improved and maintained in the manner specified by this code or by the uniform standards established by the city council by resolution; provided, however, that no such area shall be used for a car, truck, trailer or boat sales area or for the accessory storage of cars, trucks, boats or trailers;

23. Passenger terminals;

24. Printing establishments, including newspapers;

25. Private clubs and fraternal lodges;

26. Public parking garages, but not repairing;

27. Restaurants, including drive-thru, take-out and walk-up restaurants and cafeterias; no drive-in;

28. Stationery stores, including incidental printing;

29. Telegraph offices and telephone exchanges;

30. Theaters, subject to the issuance of a conditional use permit;

31. Accessory buildings and uses customarily incident to any permitted uses when located on the same site with the main building and use;

32. Similar rental services, professional or commercial recreational establishments when interpreted by the planning commission as to performance standards as set forth in Chapter 17.10;

33. Unclassified uses, as provided for in Chapter 17.36;

34. Automotive service center and service station facilities when operated as accessory to and in conjunction with regional shopping center department stores.

(Ord. 1530 § 5, 1992; Ord. 1510 § 2, 1990.)

* * *

status of any property offered for referral.

(Prior code § 6-103.)

5.62.020 Residential rental business.

Every owner or operator of a business engaging in a rental of five or more residential units other than hotels, motels, motor courts or lodging houses shall pay an annual fee as follows:

01-04 units $ 0.00 per unit

05-15 units $15.00 per unit

16-25 units $20.00 per unit

26 or more units $25.00 per unit

(Ord. 1555 § 2, 1993.)

Chapter 5.64

PUBLIC EATING ESTABLISHMENTS

Sections:

5.64.010 License and fee.

5.64.010 License and fee.

A. Public Eating Places. Every person engaging in operating a public eating place other than a refreshment stand or wayside stand shall pay a license fee based upon gross receipts.

B. Refreshment Stand. Every person engaging in operating a refreshment stand shall pay a license fee based upon gross receipts.

(Prior code § 9-502.)

Chapter 5.66

OUTDOOR RESTAURANTS

Sections:

5.66.010 Definitions.

5.66.020 Findings.

5.66.030 Permit – Required.

5.66.040 Permit – Other requirements.

5.66.050 Permit – Expiration date.

5.66.060 Permit – Not assignable.

5.66.070 Permit – Application.

5.66.080 Permit – Requirements for issuance.

5.66.090 Permit – Refusal – Issuance of permit upon conditions.

5.66.100 Permit – Renewal.

5.66.110 Permit – Revocation or suspension.

5.66.010 Definitions.

A. "Fully enclosed building," as used in this chapter, means a permanently located structure, having a roof and four walls all of which conform to the Uniform Building Code, as adopted by Section 15.04.010 of this code.

B. "Outdoor restaurant," as used in this chapter, means any public eating place which provides facilities for, or permits, consumption of food products or beverages on any portion of such premises not within a fully enclosed building.

(Prior code § 9-1500.)

5.66.020 Findings.

The city council finds as follows:

A. That "outdoor restaurants," as defined herein, exist in the city in close proximity to residences of inhabitants of the city;

B. That restaurants which provide facilities for, or permit consumption of food or beverages outdoors attract large numbers of people who congregate and loiter about the premises;

C. That operation of said outdoor restaurants in the nighttime hours has contributed to numerous and repeated instances of disturbance of the peace and quiet of the vicinity in which they are located and the creation of public nuisances;

D. That the public health, safety and general welfare require that outdoor restaurants be regulated by the city;

E. That the regulations herein prescribed as necessary and appropriated for the promotion of the public health, safety and general welfare, and

* * *

5.34.120 Theater.

5.34.130 Entertainment in general.

5.34.010 Amusement arcades.

Every person operating an amusement arcade as defined in Section 17.04.077 of this code shall pay an annual license fee based upon the annual gross receipts set forth in Section 5.48.010 of this title per amusement machine or device. (Ord. 1276 § 2, 1982.)

5.34.020 Astrology.

Every person engaging in the business, art or practice of clairvoyance, clairaudience, magic, medium character analysis, predictions or fortunetelling, and who demands or receives a fee for the exercise or exhibition of his art therein, directly or indirectly, either as a gift, donation or otherwise, or who gives an exhibition thereof at any place where an admission fee is charged, shall pay a license fee of one hundred dollars per year; provided, however, that nothing herein shall be deemed to authorize engaging in the business of professing to reveal the future events in the life of another, or the acceptance of gratuities therefor; and provided further, that this section shall not apply to any person conducting or participating in any religious

ceremony or services when such person holds a certificate, ordination or endorsement as a medium healer or clairvoyant from any bona fide church or religious association having branches or churches in other states or countries and a creed or sect of religious principles recognized by all such branches or churches, and where the fees, gratuities or profits of such ceremony or services are regularly accounted for and paid solely to or for the benefit of such church or religious association. Each applicant for a license under this section shall make and file an affidavit with the business license supervisor showing his residence within the city during the twenty-four months immediately preceding the date of said application. (Ord. 1284 § 1 (part), 1983; prior code § 7-101.)

5.34.030 Boxing and wrestling.

Every person conducting, managing or carrying on a boxing and wrestling exhibition shall pay a license fee of ten dollars per exhibition. (Prior code § 7-102.)

5.34.040 Carnivals and fairs.

Every person operating a carnival, fair or similar exhibition shall pay a license fee of one hundred dollars per day, plus five dollars per day for each show, riding device and concession in excess of twenty in number. (Prior code § 7-103.)

5.34.050 Children's amusement park.

Every person operating a children's amusement park with ferris wheel, scenic railroad, merry-go-round, flying Jenny, swing or similar device for the amusement of children, where a fee is charged or collected for any persons thereon, shall pay a license fee of six dollars per year for each ride, machine or concession. (Prior code § 7-104.)

5.34.060 Children's pony ride.

Every person operating a children's pony ride, for the amusement of children, not in connection with any established livery stable or riding academy, where a fee is charged or collected to ride such pony or ponies, shall pay a license fee of ten dollars per year for each pony or equine animal. (Prior code § 7-105.)

5.34.070 Circus.

Every person operating a circus or similar exhibition shall pay a license fee of fifty dollars per day, plus five dollars per day for each side show included in such circus or exhibition for which a separate admission fee in the amount of twenty-five cents or less is charged, or plus ten dollars per day if such admission fee exceeds twenty-five cents but does not exceed fifty cents, or plus twenty dollars per day for each such admission which exceeds fifty cents. (Prior code § 7-106.)

5.34.080 Amusement devices.

A. License Fees. Every person engaging in any business, who permits the operation of mechanical, electrical or electronic devices having a skill or amusement feature connected therewith, and which permit the use and operation of the same by the insertion of a coin, slug or token shall pay an annual license fee based upon the annual gross receipts set forth in Section 5.48.010 of this title per amusement machine or device, in addition to any other fees imposed by this code.

B. Impounding. Any mechanical amusement device operated or maintained in violation of any law of the state, or any provisions of this code, or of any conditions upon which a permit or license may be granted or of any lawful order of the chief of police, shall be deemed to be a public nuisance and shall be impounded by the chief of police and if any court of competent jurisdiction determines that said device, or the use or operation thereof, violates or has violated any of such laws or ordinances, conditions or orders, said mechanical amusement device shall be confiscated by the chief of police. Likewise if any such device is placed, operated or maintained to be operated without a current license, the chief of police shall immediately cause the same to be impounded and shall not release said mechanical amusement device until a new permit has been obtained in the manner provided for in this code for obtaining an original permit. Mechanical amusement devices impounded under the provisions of this section shall be held for a period of thirty days, and if not redeemed within such period, may be destroyed or otherwise disposed of by the chief of police, and any proceeds obtained from the disposal thereof shall be

deemed forfeited to the city to compensate it for the impounding of such device.

C. Slot Machines Prohibited. No person shall install, operate or maintain any mechanical amusement device which contains a pay-off device for the return of slugs, money, coins, checks, tokens or merchandise or any mechanical amusement device of the class commonly known as a "slot machine," or "console," and no permit or license shall be issued for any mechanical amusement device of the type mentioned in this section.

(Ord. 1276 § 4, 1982; Ord. 1264 § 4, 1982; Ord. 1028 § 6, 1972; prior code § 7-107.)

5.34.090 Music machines.

Every person engaging in the business of operating in any place open to the public any device, machine, instrument, radio or apparatus designed, constructed or used for the purpose of producing, reproducing or playing any musical tone, tones or combinations of tones, when the use, operating or playing of such device, machine, instrument, radio or apparatus is caused, permitted or allowed by the deposit of any coin, token or other thing of value in any slot, crevice or other opening, or by the payment of any fee therefor, shall pay a license fee based on the schedule set out in Chapter 5.48 of this code. (Ord. 1028 § 8, 1972: prior code § 7-108.)

5.34.100 Shooting gallery.

Every person engaging in the business of operating a shooting gallery, archery range or any other game of ball

rolling, ring throwing, disc throwing or other games of skill not enumerated shall pay a license fee of fifty dollars per year. (Prior code § 7-109.)

5.34.110 Tent show.

Every person operating any traveling theatrical performance or any theatrical performance such as comedy, spoken drama, operas or concerts, under, surrounded or partially enclosed by a canvas or similar substance, shall pay a fee of twenty dollars per year, for each machine. Provisions of Section 5.34.080B shall apply to this section. (Prior code § 7-110.)

5.34.120 Theater.

Every person engaging in the business of operating a theater shall pay a license fee of fifty dollars per year or on a gross receipts basis, whichever is greater. (Prior code § 7-111.)

5.34.130 Entertainment in general.

Every person conducting, managing or carrying on a lecture, entertainment, show or exhibition not otherwise provided for in this chapter, for which a fee is received, directly or indirectly, either as a gift, donation or otherwise, shall pay a license fee of ten dollars per day. (Prior code § 7-112.)

Chapter 5.44
ESCORT BUREAUS

Sections:

5.44.010 Defined.
5.44.020 License fees.
5.44.030 Application fee.
5.44.040 Application for license.
5.44.050 Registration.
5.44.060 Records.
5.44.070 Grounds for revocation of permit.
5.44.080 Minors.
5.44.090 Exemption.

5.44.010 Defined.

"Escort bureau" means any business or agency which, for a fee, commission, hire, reward or profit, furnishes, or offers to furnish escorts or persons who, for hire or reward, accompany others to or about social affairs, entertainments or places of amusement, or who consort with others, for hire or reward, about any place of public resort or within any private quarters. (Prior code § 6-1600.)

5.44.020 License fees.

A. Every person engaging in the business of an escort bureau shall pay a license fee of fifty dollars per year.

B. Every person employed as an escort in an escort bureau shall pay a license fee of two dollars per year.

(Prior code § 6-1601.)

5.44.030 Application fee.

Every application for such license shall comply with Chapter 5.14. (Prior code § 6-1602.)

5.44.040 Application for license.

Application for such license shall be under oath and shall contain the following information:

A. The name of applicant and a complete statement regarding any and all true and fictitious names used by the applicant within five years immediately prior to the date of filing the application;

B. The residence address and telephone number of the applicant;

C. The age, date and place of birth of the applicant;

D. The place or places where applicant will engage in his business, calling or employment;

E. The nature and place of applicant's business or employment within five years immediately prior to the date of filing the application;

F. A photograph of the applicant taken within sixty days immediately prior to the date of filing the application, which picture shall be two inches by two inches, showing the head and shoulders in a clear and distinguishing manner;

G. The finger and thumb prints of the applicant, to be taken by the police department of the city;

H. The names of at least two reliable property owners of the county, who will certify as to the applicant's good character and/or business responsibility; or, in lieu of the names of such references, such other available

evidence as to the good character and/or business responsibility of the applicant as will enable an investigator to properly evaluate such character and/or business responsibility;

I. A statement that applicant has never been convicted of a crime involving moral turpitude, or a felony; if any such crime has been committed by applicant, a complete statement of the nature of such crime and the place and date of conviction.

(Prior code § 6-1603.)

5.44.050 Registration.

Each application for a permit must state the names and addresses of all escorts intended to be employed by the applicant, and, if a permit is granted, the permittee must notify the chief of police in writing, within twenty-four hours, of any change in personnel with regard to escorts. All such escorts shall be registered by the chief of police: provided, however, that no escort shall be registered unless there is furnished to the chief of police satisfactory evidence of the good moral character of such escort. The registration of any escort may be canceled for cause by the chief of police and thereafter no escort bureau shall employ, engage or deal with such escort. Any escort who has had his registration canceled by the chief of police may appeal to the council from such decision in the manner provided in Section 5.16.010 of this code. (Prior code § 6-1604.)

5.44.060 Records.

A record shall be kept by each permittee showing every transaction whereby any escort is employed, furnished or arranged for on behalf of any patron or customer, the date and approximate hour of the transaction, the name, address and telephone number of the patron or customer, the name of each escort involved and such other information as the chief of police may reasonably require by rule or regulation. Such record shall be kept available and open to the inspection of any police officer at any time during business hours and shall be presented before the chief of police at any time upon written request therefor. (Prior code § 6-1605.)

5.44.070 Grounds for revocation of permit.

In addition to the grounds for revocation contained in Section 5.16.020 of this code, any permit to engage in the business of an escort bureau may be revoked upon any of the following grounds:

A. That the permittee has, in the course of said business, committed, or caused, permitted, encouraged or condoned the commission of any act in violation of this chapter, or any lewd and immoral act, or any act of prostitution;

B. That the business has been conducted, in whole or in part, as a subterfuge to facilitate the conduct of any unlawful or immoral business or practice.

(Prior code § 6-1606.)

5.44.080 Minors.

A. No permittee under the provisions of this chapter shall employ, as an escort, any person under twenty-one years of age;

B. No permittee under this chapter shall furnish any escort to, or accept employment from any patron, customer or person to be escorted who is under twenty-one years of age, except at the special instance and request of the parent, guardian or other person in lawful custody of the person on whose behalf the escort service is engaged.

(Prior code § 6-1607.)

5.44.090 Exemption.

The provisions of this chapter shall not apply to the lawful business of any employment agency licensed under the laws of the state. (Prior code § 6-1608.)